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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,618	12/18/2000	Juan C. Alvarado	59.0038	5812
23718 7590 05/26/2009 SCHLUMBERGER OILFIELD SERVICES 200 GILLINGHAM LANE MD 200-9 SUGAR LAND, TX 77478				
EXAMINER				
DENNISON, JERRY B				
ART UNIT		PAPER NUMBER		
2443				
MAIL DATE		DELIVERY MODE		
05/26/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/741,618

Applicant(s)

ALVARADO ET AL.

Examiner

J Bret Dennison

Art Unit

2443

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/16/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/88)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Action is in response to Application Number 09/741,618 received on 10/16/2007.
2. Claims 1-12, 15-24 are presented for examination.
3. The prosecution for this case has been transferred to another Examiner. All corresponding communications should be directed to Examiner's contact information, provided below.

Response to Arguments

Applicant's arguments are not persuasive.

Applicant's principal argument is the failure of Harvey to disclose a buffer to send outgoing packets.

Examiner respectfully disagrees.

The teachings of Harvey disclosed the use of the HTTP protocol, which is well known to be built on top of the TCP protocol. When sending outgoing packets using TCP, it is well known that a transmit queue is used in order to treat packets in a first-come first-serve ordering. Therefore, since Harvey disclosed the use of HTTP, and HTTP is built on top of TCP, the outgoing packets must be queued before sending them out.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Continued Examination Under 37 CFR 1.114

4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/16/2007 has been entered.

Claim interpretation

5. Applicant's specification does not provide explicit examples of a "program storage medium" as claimed. For prosecution, Examiner will interpret a "program storage medium" to require hardware as one of ordinary skill would interpret the limitation with respect to Applicant's Specification.

Claim Objections

6. Claim 19 is objected to because of the following informalities: Claim 19 includes the limitation "allow a user to select on or more of the files". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 1 recites the limitation, "a return-data-buffer connected to the server-side script." A buffer is well known to be hardware whereas a server-side script is software. It is unclear to Examiner how a buffer is connected to a server side script.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-4 and 6-12 & 15-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent US 6,519,568 B1 to Harvey.

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

10. Regarding Claims 1, 15, and 19, 23 & 24, Harvey discloses a system, method and computer-readable code for near real-time transfer of a data file from a first computer to a second computer without requiring extensive protocol customization on the second computer, (Abstract; Col. 3-7; and Col. 27-34), comprising:

a first computer having:

a connection to a computer network and operable to communicate over the computer network using a standard protocol, (Col. 4, lines 66-67 and Col. 5, lines 1-8);

a server side script operable to receive download requests from a second computer and, responsive to each download request from the second computer, operable to launch an http data streamproducer of the standard

protocol and to read and write data over the computer network using the standard protocol, (Col. 3, lines 36-42; Col. 24, lines 60-67; and Col. 25, lines 1-6);

each httpstreamproducer operable to read a designated source file and simultaneously write data from the source file into a return-data-buffer connected to the server-side script, (Col. 3, lines 53-60; HTTP is built on top of the TCP Specification, which uses an output queue to send outgoing packets in a first-come first-serve order, Therefore the return-data-buffer is inherently disclosed by the use of HTTP);

a read-while-write mechanism allowing the httpstreamproducer to read data from the designated source file while the designated source file is being written by a data producing program, (Col. 3, lines 53-60 and Col. 25, lines 14-56);

wherein the server side script is further operable to transmit blocks of data from the plurality of httpstreamproducers over the connection, (Col. 3, lines 53-60; Col. 24, lines 60-67; and Col. 25, lines 1-6); and
a second computer having:

a connection to the computer network and operable to communicate over the computer network using the standard protocol, (Col. 4, lines 66-67 and Col. 5, lines 1-8);

a transaction controller operable to send data to and receive data from the server side script, and further operable to marshall the data to an

appropriate transaction handler, (Col. 3, lines 42-48 and Col. 5, lines 20-35); and

a transactions handler class, each instance of which is operable to read and write data over the computer network using the standard protocol and to write blocks of data to a destination file simultaneously with receiving data from the computer network, (Col. 5, lines 20-67 and Col. 6, lines 1-13);

a data StreamHandler for interpreting a database stream received from the transaction handler, (Col. 5, lines 49-67 & Col. 6, lines 1-52).

Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Newly Amended Claims 1 & 15, and Original Claims 19, 23 & 24.

11. Regarding Claims 2, 8, 17 and 18, Harvey discloses a system, method and computer-readable code wherein

the first computer further comprises:

a webserver for transmitting a webpage containing a list of files for download by other computers, (Col. 4, lines 61-65 and Col. 28, lines 31- 39);

the second computer further comprises:

a webbrowser for displaying the webpage containing the list of files available for download, (Col. 20, lines 52-60; Fig. 16; and Col. 21, lines 44-49); and a trusted applet operable, in response to a user selecting a file from the list, to create a transaction controller instance operable to manage a plurality of file transfer threads, wherein in

each file transfer thread, in response to the request from a user to download a file, the transaction controller instance is operable to create a transaction handler instance for receiving data from the first computer, (Col. 3, lines 42-48; Col. 5, lines 20- 48; Col. 19, lines 59-67; Col. 20, lines 1-50); Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claims 2, 8, 17 and 18.

12. Regarding Claims 3 and 9, Harvey discloses a system, method and computer-readable code wherein the second computer further comprises:

at least one stream handler class having at least one file interaction method for performing a file operation selected from the set creating a file, opening a file and writing to a file, (Col. 24, lines 60-67 and Col. 25, lines 1-37); and

wherein the transaction handler instance creates a stream handler instance appropriate for the file selected by the user, (Col. 24, lines 60-67 and Col. 25, lines 1- 37).

Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claims 3 and 9.

13. Regarding Claim 4, Harvey discloses a system, method and computer-readable code wherein the standard protocol is http, (Col. 5, lines 5-8). Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claim

4.

14. Regarding Claims 10-12, 20 and 22, Harvey discloses a system, method and computer-readable code wherein the destination is a data file, (per pending Claims 10 & 20), (Col. 25, lines 33-36), an application program that is a data consumer, (per pending Claim 11), (Col. 4, lines 45-55), or a database, (per pending Claims 12 & 22), (Col. 4, lines 56-60). Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claims 10-12, 20 and 22.

15. Regarding Claim 6, Harvey discloses a system, method and computer-readable code wherein the server-side script implements an http GET command and the download request is an invocation of the http GET command of the server-side script, (Col. 5, lines 5-8). Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claim 6.

16. Regarding Claim 7, Harvey discloses a system, method and computer-readable code further comprising an httpStreamProducer class and wherein the httpStreamProducer is an instance of the httpStreamProducer class, (Col. 3, lines 60-67 and Col. 28, lines 31-55). Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Claim 7.

17. Regarding Newly Amended Claim 16 and Original Claim 21, Harvey discloses a system, method and computer-readable code further comprising launching an application, (data streamhandler), on the client-side wherein blocks of data are

transferred upon receipt of the same, (Col. 4, lines 45-55 & Col. 6, lines 1-52).

Therefore, this reference may reasonably be read to teach or describe every element or claim limitation of Newly Amended Claim 16 and Original Claim 21.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6 6-12, 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Val et al. (US 20050198364) in view of RFC793 – Transmission Control Protocol, hereinafter referred to by “TCP Specification”.

18. Regarding claim 1, Val disclosed a system for near real-time transfer of a datafile from a first computer to a second computer without requiring extensive protocol customization on the second computer and, comprising:
a first computer having:

a connection to a computer network and operable to communicate over the computer network using a standard protocol (Fig. 3, connection between client and server using one of many standard protocols as listed in Fig. 3);

a server side script, responsive to a down-load request from a second computer, operable to launch an http data streamproducer of the standard protocol and to read and write data over the computer network using the standard protocol ([0012], [0032], client requests stream, server provides stream, clearly requiring the server to produce the stream to send);

the http streamproducer operable to read a designed source file and simultaneously write data from the source file and a read-while-write mechanism allowing the http streamproducer to read data from the designated source file while the designated source file is being written by a data producer program ([0010], Val disclosed the ability to perform the functions with live data, which requires reading the live data from a source file while it is being written and writing the live data in accordance with an outgoing data stream as described in [0012], [0056], Val also disclosed performing the functions using many types of media data such as video and audio, all requiring reading from a source file and writing the data stream out to the requesting client; [0035], Val disclosed the HTTP protocol built on top of TCP); and a second computer (Val, [0033] client) having:

a connection to the computer network and operable to communicate over the computer network using the standard protocol (Fig. 3, connection between client and server using one of many standard protocols as listed in Fig. 3);

a transaction handler class, each instance of which is operable to read and write data over the computer network using the standard protocol and to write blocks of data to a destination simultaneously with receiving data from the computer network (Val,

[0033], Val disclosed the client receiving a data stream from the server, requiring the client to write the blocks from the data stream to memory/database in order to actually use the data to, for example, watch video, or listen to a song); and

a data StreamHandler for interpreting a database stream received from the transaction handler (Val, [0058], Val disclosed the client receiving the data stream in order to control it, thereby requiring a StreamHandler in order to make sense of the data stream and allow the user to, for example, PLAY the media from the stream).

Val did not explicitly state the data read from the source file is written into a return-data-buffer connected to the server-side script.

In an analogous art, the TCP Specification disclosed a specific way for how TCP handles outgoing data by using an outgoing queue in order for outgoing SENDS to be served in a first come-first served order, thereby queuing and serving them in the order as received (TCP Specification, [0047]).

Since Val indicated that the HTTP protocol is built on top of the TCP protocol, one of ordinary skill would have been motivated to search the prior art in order to determine well known ways for how TCP handles outgoing packets. Val also disclosed that the system can handle multiple data connections at once (Val, [0053]). This also would have motivated one of ordinary skill in the art to search for how TCP handles multiple connections.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the TCP implementation, as described in the TCP Specification, into the teachings of Val, in order to follow the well known TCP

protocol that Val suggests, thereby making it easier for customers who are already following well known TCP standards to use the system of Val without having to perform any extensive implementation, thereby making the system of Val more desirable to use.

19. Regarding claim 3, Val and TCP Specification disclosed the limitations as described in claim 1, including wherein the second computer further comprises at least one stream handler class having at least one file interaction method for performing a file operation selected from the set of steps comprising creating a file, opening a file and writing to a file; and wherein the transaction handler instance creates the stream handler instance appropriate for the file selected by the user ([0061], client receives the media data which requires a stream handler in order to properly create a file at the client end in order for the client to be able to control).

20. Regarding claim 4, Val and TCP Specification disclosed the limitations as described in claim 1, including wherein the standard protocol is http (Val, [0062]).

21. Regarding claim 5, Val and TCP Specification disclosed the limitations as described in claim 1.

Val and TCP did not explicitly state wherein the standard protocol is WAP.

Examiner takes Official Notice (see MPEP § 2144.03) that "streaming data to a client using the WAP protocol" was well known in the art at the time the invention was made. Since WAP was a well known protocol at the time the invention was made used

for streaming data, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate using the most advantageous protocol for wireless devices, i.e. WAP in order to stream data to the client in accordance with the teachings of Val and TCP Spec in order to provide a more scalable system that allows all types of devices to use the system, thereby increasing desirability of use by customers. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses such an assertion, the examiner should cite a reference in support of his or her position". However, MPEP § 2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

22. Regarding claim 6, Val and TCP Specification disclosed the limitations as described in claim 1, including wherein the server-side script implements an http GET

command and the download request is an invocation of the http GET command of the server-side script (Val, [0058]-[0059]).

23. Claims 2, 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Val et al. (US 20050198364) in view of RFC793 – Transmission Control Protocol, hereinafter referred to by “TCP Specification” and in further view of Lindblad et al. (US 6225993).

24. Regarding claims 2 and 8, Val and TCP Specification disclosed the limitations as described in claim 1, including wherein the first computer comprises a web server (Val, [0056]) that provides a web page that identifies web page files containing the desired media by clients (Val, [0057]) and also allows for employing the HTTP protocol to communicate media commands from a browser application or browser plugin to the server (Val, [0058]) as well as a browser on the client side for allowing selection of the desired media (Val, [0057]-[0058]).

Val and the TCP Specification did not explicitly state the client including a trusted applet operable, in response to a user selecting a file from the list, to create a transaction controller instance operable to manage a plurality of file transfer threads, wherein in each file transfer thread, in response to the request from a user to download a file, the transaction controller instance is operable to create a transaction handler instance for receiving data from the first computer.

In an analogous art, Lindblad disclosed a system and method for transmitting data streams in which an applet is used as a plug-in for a web browser, the applet being used to control the stream (Lindblad, col. 2, lines 28-45), the applet being a Java applet, clearly requiring some form of transaction controller instance in order to handle transfer threads to download a file.

One of ordinary skill in the art would have been motivated to combine the teachings of Val and TCP Specification and Lindblad since the combined teaching of Val and TCP Specification suggests the use of web browser plugins and Lindblad provides a specific type of plugin.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Lindblad's applet as the web browser plugin of Val and TCP Specification in order to provide the designer with an easy way to incorporate motion video titles into HTML pages (Lindblad, col. 2, lines 33-38).

25. Regarding claim 7, Val and TCP Specification disclosed the limitations as described in claim 4.

Val and TCP did not explicitly state comprising an `HttpStreamProducer` class and wherein the `HttpStreamProducer` is an instance of the `HttpStreamProducer` class.

In an analogous art, Lindblad disclosed a system and method for transmitting data streams in which an applet is used as a plug-in for a web browser, the applet being used to control the stream (Lindblad, col. 2, lines 28-45). One of ordinary skill in the art would recognize that a Java applet that handles a data stream would require a stream

producer class and each instance of the same applet would call an instance of this stream producer class.

One of ordinary skill in the art would have been motivated to combine the teachings of Val and TCP Specification and Lindblad since the combined teaching of Val and TCP Specification suggests the use of web browser plug-ins and Lindblad provides a specific type of plug-in.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Lindblad's applet as the web browser plug-in of Val and TCP Specification in order to provide the designer with an easy way to incorporate motion video titles into HTML pages (Lindblad, col. 2, lines 33-38).

26. Regarding claim 9, Val, TCP Specification, and Lindblad disclosed the limitations as described in claim 8, including wherein the second computer further comprises a datastream handler class having a method for receiving data from the transaction handler instance and for writing data to a destination (Lindblad, col. 2, lines 28-45, By Lindblad disclosing a Java applet for receiving the data stream, this applet must include such instances for handling the stream and writing it to a destination in order for the user to use the data, i.e. watch a video).

27. Regarding claim 10, Val, TCP Specification, and Lindblad disclosed the limitations as described in claim 9 including wherein the destination is a data file

(Lindblad, col. 2, lines 28-45, the only way the data can be read is from a data file, i.e. data).

28. Regarding claim 11, Val, TCP Specification, and Lindblad disclosed the limitations as described in claim 9 including wherein the destination is an application program that is a data consumer (Lindblad, col. 2, lines 28-45).

Regarding claim 12, Val, TCP Specification, and Lindblad disclosed the limitations as described in claim 11 including wherein the destination is a database (Lindblad, col. 2, lines 28-45, the received data stream must be written to memory, i.e. database).

29. Claims 15-18 recite a method for performing limitations that are substantially similar to the limitations as described in claims 1-12 and are therefore rejected under the same rationale. Claims 19-23 recite an article of manufacture performing the limitations that are substantially similar to the limitations as described in claims 1-12 and are therefore rejected under the same rationale. Claim 24 includes a system with limitations that are substantially similar to the limitations as described in claims 1-12 and are therefore rejected under the same rationale.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J Bret Dennison/
Primary Examiner, Art Unit 2443